



D-1077

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
Jay Paul Drummond, et al.)	
)	
Application No.: 09/077,337)	Art Unit 3691
)	
Confirmation No.: 5900)	
)	
Filed: May 27, 1998)	Patent Examiner
)	Kelly Campen
)	
Title: Automated Banking Machine)	
Apparatus and System)	

Mail Stop Patent Ext.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Petition(s) under 37 CFR 1.181 and/or 37 CFR 1.182

Kindly enter the following petition(s) without prejudice. The Applicants petition for review of the determined length of the patent term extension. The Applicants respectfully submit that they are entitled to a total patent term extension that comprises 1776 days.

The Applicable Legal Standards

Former 35 U.S.C. § 154(b)(1)

Interference Delay or Secrecy Orders - If the issue of an original patent is delayed due to a proceeding under section 135(a) of this title, or because the application for patent is placed under an order pursuant to section 181 of this title, the term of the patent shall be extended for the period of delay, but in no case more than 5 years.

37 CFR 1.701(c)(1)(ii)

- (1) The period of delay under paragraph (a)(1) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:
 - (ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

Facts of record

The record shows the following dates and papers:

10/01/2002	Begin first suspension initiated by the Office
04/09/2003	Application activity restarted due to expiration of first suspension
02/08/2006	Begin second suspension initiated by the Office
03/21/2006	Request for reconsideration regarding the second suspension
08/18/2006	Application activity restarted due to expiration of second suspension

(The duration from 02/08/2006 to 08/18/2006 equals 192 days)

Additionally, the Application is not subject to a terminal disclaimer, the Applicants acted with due diligence, and the indicated patent term extension comprises 1584 days.

Basis for entitlement to additional patent term extension

The patent term extension does not include time related to Interference

The second suspension was Interference related. The record shows that the first suspension was Interference related, which relationship resulted in a need for a six-month delay. Applicants respectfully submit that the second suspension's association with the first suspension along with its similar need for a six-month delay infers that the second suspension was also Interference related. As a result, Applicants are entitled to additional patent term extension due to the second suspension being Interference related. The indicated patent term extension does not reflect the additional time to which Applicants are entitled as a result of the second suspension. This additional time comprises 192 days.

The patent term extension does not return time that was taken unlawfully

The second suspension was also an unlawful taking of time. The Applicants' Request for reconsideration (filed 03/21/2006) included valid arguments as to why the second suspension was legally improper. For example, the second suspension was legally improper because it was never approved by a Technology Center Director (MPEP § 709). Furthermore, the Office never answered the Request for reconsideration.

The second suspension constituted an unlawful taking of time from Applicants' entitled patent term, i.e., the patent term that would have resulted without occurrence of the legally improper second suspension. This was a violation of the Administrative Procedures Act. The Office's indicated patent term extension does not reflect the additional time entitled to Applicants

as a result of the unlawful taking of time due to the legally improper second suspension. This additional time comprises 192 days.

The indicated patent term does not include patent term adjustment time

This Application was pending on May 29, 2000. Thus, Applicants respectfully submit that they have a choice between the former 35 U.S.C. § 154(b) and the amended 35 U.S.C. § 154(b) (effective May 29, 2000). This Application was pending and thus had the status of having been "filed on" the effective date of Pub.L. 106-113. As a result, pursuant to §§ 4405 of Pub.L. 106-113, the Application is eligible for the patent term adjustment provisions under 35 U.S.C. § 154(b) (amended) and 37 CFR 1.702-1.705. The indicated extended patent term does not take into consideration the time entitled to Applicants as a result of this eligibility.

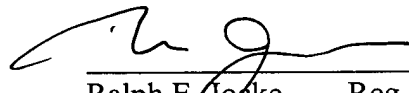
The correct length of patent term extension

The Applicants submit that they are entitled to at least an additional 192 days. Thus, 1584 days (the presently indicated extension) + 192 days (the additional days) = 1776 total days. Therefore, the correct length of the patent term extension should be at least 1776 days.

Conclusion

Applicants' petition(s) should be granted for the reasons presented herein. The undersigned is willing to discuss any aspect of the Application at the Office's convenience.

Respectfully submitted,



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